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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/697,645	10/27/2000	Russell L. Strothmann	023895/257046	4471

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EXAMINER

CAPUTO, LISA M

ART UNIT PAPER NUMBER

2876

DATE MAILED: 05/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JL

**Advisory Action**  
**Before the Filing of an Appeal Brief**

Application No.

09/697,645

Applicant(s)

STROTHMANN ET AL.

Examiner

Lisa M. Caputo

Art Unit

2876

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 May 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
6. ☒ Newly proposed or amended claim(s) 8,10,12,13,21,23,25,26,34,36,38 and 39 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 8,10,12,13,21,23,25,26,34,36,38 and 39.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 1,2,4-7,14,15,17-20,27,28 and 30-33.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_.

  
**DIANE I. LEE**  
**PRIMARY EXAMINER**

Continuation of 5. Applicant's reply has overcome the following rejection(s): The amendment to independent claims 8, 21, and 34 has overcome the rejections of these claims by DeMarcken and Waytena because certain limitations that were previously objected to in the dependent claims as containing allowable subject matter not taught by the references were added into claims 8, 21, and 34 .

Continuation of 11. the arguments are not persuasive. In response to applicant's arguments that the combination of DeMarcken and Waytena does not teach the limitations of independent claims 1, 14, and 27, examiner respectfully disagrees and submits that as claimed, the prior art references do indeed teach all of the limitations. It is claimed that a probability that the candidate itinerary will remain available for booking for a period of time in the future is determined; as claimed, DeMarcken and Waytena do indeed teach these limitations since DeMarcken discloses an airline seat availability predictor and Waytena further modifies the patent to be able to determine an availability for "a period of time in the future." Further, the applicant argues that Waytena does not teach or suggest that a determination that a probability that the reservation will remain available for booking for a period of time in future is actually made. Examiner respectfully disagrees and submits that Waytena does indeed teach this limitation because the nature of the invention teaches that it will be known which reservations are available in the future. In addition, it is well known in the art to use probabilities and statistics to be able to determine conditions that aren't just applicable immediately, but in the future as well.